

### REMARKS

Claims 1-8 and 14-61 are canceled. Claim 9 is amended. Claims 62-65 are new. Claims 9-13 are pending in the present application.

Claims 62-65 are added to round out the scope of the invention. No new matter is added.

Claims 9-13 stand rejected under 35 U.S.C. § 102(a) as being anticipated by Applicant's Admitted Prior Art (APA). Applicant respectfully traverses this rejection.

Claim 9, as amended, recites a memory device comprising "a gate stack pair with a space between them defining a contact opening" and "a vertical oxide spacer adjacent to each gate stack of said gate stack pair." Claim 9 further recites "a nitride layer adjacent each said vertical oxide spacer and each said gate stack, neither of said nitride layers extending to overlay said contact opening between said gate stack pair, wherein said vertical oxide spacer is recessed from a top surface of each gate stack."

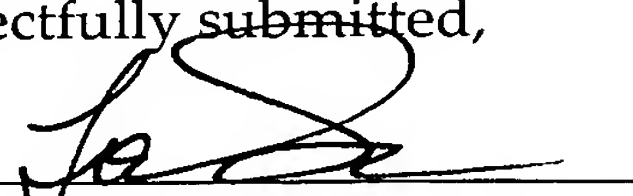
The Office Action asserts that APA FIG. 2D illustrates "a respective continuous nitride layer overlaying each said vertical oxide spacer and each said gate stack (APA – Fig. 2C(12) and page 3 [0007]), neither of the continuous nitride layers extending to cover the contact opening between the gate stack pair (APA – Fig. 2D (12) [sic])." Office Action at page 2. However, APA FIG. 2D does not illustrate a vertical spacer that is "recessed from a top surface of each gate stack," as recited in amended claim 9. Since the APA does not disclose this limitation, claim 9 and claims 10-13 depending therefrom are patentable over the APA. Accordingly, Applicant respectfully requests that the 35 U.S.C. § 102(a) rejection of claims 9-13 be withdrawn.

In view of the above amendment, Applicant believes the pending application is in condition for allowance.

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Respectfully submitted,

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